

10 January 1979

MEMORANDUM

TO: ADM Stan Turner
The DCI

FROM:

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RE: The CHARTERS issues

Your letter of 26 December 1978 asked me once again to take a look at the state of the play on the various charters issues. As you said, I worked on this for you back in "the beginning" in connection with PRM-11. That was summer '77. I also sent to you, at your request, another memo on this subject just a few months ago in summer '78--although perhaps you do not recall it.

One reason that I am having a hard time communicating to you on this subject is because you and I see this matter in quite different perspectives. I think you want something that you are never likely to get. You tend to see this primarily as a legal and procedural matter, somewhat like negotiating a treaty among concerned individuals and entities. You naturally want your special needs and interests to be protected, so that you can live with the treaty. But, even if this were not a major hassle among various people and factions in Washington, I suspect that you would want this charter-type codification in any case. Maybe this desire stems from your neat and orderly mind, and your Navy background where there was ordinarily "Naval Regulations" and other directives spelling out all of the "do's and don't's" in clear black and white. If you could get that, you would know exactly what to do in identifying an offense, deciding whether to send an offender to captain's mast or a summary court-martial or a general court-martial, etc. It's somewhat like a "Magenot Line" mentality, hoping for some hard and enduring solution that will solve all these problems forever, because you would have that nice "hierarchy of regulations and controls" mentioned in your letter of 26 December. In a perfect world, these kinds of desires would make perfect sense. But it's precisely because it's not a perfect world that it ain't gonna ever happen this way.

Sure, you need some clarification and perhaps improved codification of rules, regulations and controls. You already have a lot of them, starting with your original charter in the National Security Act of 1947 (as amended), and then Executive Order 11095 as revised in Executive Order 12036. So it's not as if you were operating totally without any governing documents.

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But you won't ever get a neat and nifty new "ten commandments" or even "a hundred and ten commandments" that you can chisel in stone out across the front door of this building for everybody to read and salute when to come to work every morning.

The fundamental fact in my judgment is that you are embroiled in a highly political process rather than a gentlemanly debate over legal and procedural issues and rather than simply a negotiating process. There are some very important political actors in this town (and a few other towns) who are heavily involved. They come at this from widely divergent values, perspectives, responsibilities, roles, and states of knowledge. They disagree on what is more important and what is less.

How will it all end? Well, as I have said, it won't end with the firm clear resolution that you seem to hope for and expect. Political processes rarely have neat tidy outcomes, because political actors live to fight on other days in other ways. For losers in politics as in baseball, there's always next year. BUT, in politics, people do lose interest in old issues as new issues emerge.

Let me then give you my quick summary on how this began, where it is now, and a couple of variations on how it will continue to unfold.

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[REDACTED] interpretation. It began in the emotional aftermath of the Vietnam and Watergate scandals. This is a typical way for things to begin in the American political system, although it's not an ideal way for things to come up for consideration. Mr. Carter, like thousands of other politicians for hundreds of years, promised to clean up the scandals and make everybody behave themselves in the interest of good government. But then, of course, President Carter discovered that he had a lot of other things to worry about too, and there were a number of folks over in the House and Senate who had their own ideas about how to clean up the intelligence community in particular. In brief, there were a lot of candidates for the role of Moses, to go to the mountain top and fetch back a new "ten commandments."

You know about the Senate Select Committee, of course. Chairman Church temporarily lost interest while he ran for President, so Senators Bayh and Huddleston did most of the work. When it came time to draft a bill, they turned it over to a young fellow

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named Elliot Maxwell who had not yet then graduated from Yale Law School, and who has since wandered over to work for the FCC. Maxwell produced S. 2525, and the House introduced the same bill, but the House people had much less agreement or interest in the matter than the Senators, and the House seems fairly quiescent on the subject at least for now. The former Chairman of the House Committee is not even in Congress anymore.

So, the main play from the Congress is from the Senate side, and the two key guys are Bayh and Huddleston...at the moment. I think that even these two fellows realized that S. 2525 was a bad bill, and so they decided a few months ago to put the monkey on the back of the Executive Branch. Remembering that Candidate Carter had promised to come up with a proposed bill in addition to what he covered in Executive Order 12036, Bayh and Huddleston told the White House that they would like to see an executive draft. Meanwhile, in the spring and summer and fall of '78, an interagency Working Group was thrashing around on the charters business, and finally came up with a paper including some 42 main points clustered under obvious headings.

A meeting finally took place on 27 November in the White House, for discussion of the 42-point paper. Vice President Mondale insisted on going first, and he said the whole thing was simply terrible, worthless, etc. So, what to do next?--back to Square One? It seemed clear to some people at that White House meeting that Mondale had not even read the 42-point paper, but rather had gotten ~~Fred~~ Schwartz, one of the alumni of the old Select Committee staff now practicing law in New York, to give him ammunition to tear the paper apart. Whether Schwartz read the paper is another question. Maybe he just dug out some old notes from the Committee staff files, and gave those to Mondale to use as his blunderbuss. Anyway, the standard bureaucratic upshot in this kind of situation was adopted--create a new and higher-level committee, including Carlucci from your operation, Aaron from the White House, Harmon from Justice, etc. There was one meeting of this new group before Christmas, when Aaron simply issued an edict on two of the 42 points. Another meeting was scheduled for after Christmas, and it occurred yesterday--9 January. I am told that it was inconclusive, as one might expect.

Meanwhile, I am told that Tony Lapham in a somewhat separate but closely related business has come up with a paper that is confined to some 12 or 13 points, that Tony is negotiating with Justice, and that Tony is fairly optimistic he can wrap up successfully over the next two or three months.

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OK, what happens now? I have two scenarios for you--you can call them the "good news" scenario and the "bad news" scenario.

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The "good news" scenario. The original passions and emotions that stimulated all of this concern will gradually fade. The people who originally felt the passions and emotions will themselves pass from the scene, or be diverted by new issues and priorities.

On the intelligence business, there were always two issues in the first place. One is what I call the "quality of the product" issue. The people who were agitated on this one were mainly concerned about how to get better intelligence, to avoid more Vietnams and other disasters. The second is the "abuses" issue, and the people who were agitated on this one were mainly concerned to avoid various actions thought to be contrary to humanitarian values. The "abuses" people were also the "charters" people. It was the classic and enduring dilemma, a textbook case, between the values of efficiency and the values of democracy. But, in some respects, these two sets of issues are the opposite ends of a see-saw. When the "quality of the product" is uppermost in people's minds, they tend to give "abuses" or other horrors a lower priority. So, we get a guy like Senator McGovern who suggested a few months ago that the U.S. use military force in Cambodia, after having earlier been the most outspoken critic of U.S. military involvement in Vietnam. And we get lots of people worrying now about how the situation in Iran seemed to take us by surprise, and they are now more worried that various new regulations have hamstrung the intelligence community--more than they are worried about the "abuses" issue. Typical situation in American history.

Meanwhile, 1979 will be a very political year in the U.S. The filing deadline for the critical New Hampshire primary is only one year away. President Carter is already seen as highly vulnerable by other ambitious Democrats. He was unable to control even the Democratic Party mini-convention in Memphis a few weeks ago, where Senator Kennedy stole the show. Kennedy has now hired a political staff, and there can be little doubt that he is gathering his forces for a run at Carter. A major poll just this week showed Kennedy running 57-to-21 over Carter in New Hampshire, and 42-to-34 nationwide. But New Hampshire is critical, and Kennedy's lead there is virtually insurmountable unless the nation is in the midst of a major military crisis by a year from now and Carter looks effective as Commander-in-Chief.

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My own judgment is that Carter could probably defeat a Republican challenger, given the GOP propensity for political suicide. Three Republican rogue elephants in Texas--Bush, Connolly, and Clements--will kill off each other in the Texas jungle. Ford will offset Reagan. Howard Baker is the only viable possibility. But the main point is that Carter is unlikely to get a chance to run against a Republican, in my opinion. In brief, I think he is a "lame duck" right this minute, but he will do whatever he can to avoid this.

This means that Mr. Carter will have many other massive issues to confront in '79...the main domestic issue is of course inflation, and the oil workers are now threatening to go on strike unless getting new wages that will completely bust the presidential guidelines, but who will say no to the oil workers while we are running short of oil because of Iran? Then there is the big fight brewing on the omnibus trade bill, which Robert Strauss says will be bigger than the Panama Canal treaties fight. Finally, there is SALT II. Behind all this, charters for the intelligence community will get a very low priority from the White House. Mondale might try to push it, but his own political stock is way down, given the recent election results from Minnesota contrary to his best efforts, and Mondale can't push anything unless the President is clearly and strongly behind him.

On the Senate side, Dee Huddleston has a neat and orderly mind, and he would naturally like to have something come from all of his work on the Senate Select Committee. But he just got re-elected in a landslide in Kentucky, so he has no political worries, and other fish to fry. He could be placated with some fairly small evidence, I think, that you are cleaning up the act out here on your own, perhaps with cooperation with the A.G.

The most serious threat, then, is not from the White House itself, or the Senators, but rather from that amorphous group of former staffers from the Senate Select Committee and their friends who will occasionally leak stories to the press or otherwise stimulate journalists on a slow news day to print something asking: "Whatever happened on charters?" But this kind of pressure will be spasmodic and ineffective, as most of these old staff alumni will also get caught up in the '79 pre-election fever and will be trying to get themselves positioned for good appointments under a new President elected in '80.

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In summary on the "good news" scenario. There will be occasional little flare-ups of interest and concern from somebody in the White House (most likely Mondale and/or Aaron), possibly from one or two Senators (most likely Bayh and Huddleston), and surely in the press stimulated by former staffers who retain activist aspirations. But these flare-ups will die down quickly, and will become less frequent until they finally disappear altogether, as everybody becomes wholly swamped by the overwhelming new issues of '79 heading into the 1980 presidential election year. --- Of course, the Working Group will continue to meet occasionally, papers will be cranked out and exchanged and discussed, etc., but it will be a very slow ballet, and a good choreographer wouldn't touch it. It will continue to complicate the lives of the people in your Office of the General Counsel, but nothing of any great significance will come of it, over and above what has already happened. The bottom-line implication for you is simply the following: THE PRESSURES FOR CHARTERS WILL GRADUALLY DISAPPEAR EXTERNALLY, AND THEN ANY REMAINING PRESSURES WILL BE INTERNAL (i.e., will be the pressures that you yourself generate).

[There is one huge hidden assumption in the "good news" scenario as summarized above, and this is an assumption of no new intelligence scandals pertaining to your own period as DCI.. But one big goof or a series of little ones...]

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The "bad news" scenario. OK, I have said that you will have steadily less pressures on you with respect to charters from the White House, anywhere in Congress, and the ex-staffers, meaning that all external pressures will gradually subside over 1979-80 as new issues overload the U.S. political system. If Jim Schlesinger is correct that we may well have to face gasoline rationing, that one issue alone could be massive in terms of its potential for political infighting and bloodshed.

BUT there is one possible exception--one possible source of very difficult if not damaging pressure, and that is from Senator Church and his new Senate Foreign Relations Committee Chief of Staff: Bill Bader. I would guess that the odds are about 50-50 that you will be the target of some major hearings from that Committee. Maybe the hearings won't be advertised as an effort to undermine you, but that will in fact be the purpose. Not just hearings, either, but occasional leaks to the press, I would guess. It could be fairly steady harassment. Church and Bader will be extremely alert to any big goof, or a steady series of little problems, at the CIA.

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You just have to remember that politics at high levels are not a gentleman's game, and it can get very vicious when high stakes are on the table. The chance either to be the President of the largest and still-most-powerful nation in history, and/or the chance to knock off a weak President, are enormous temptations. Don't for a moment underestimate the Kennedy "machine." It's still there, with key people all over Washington and all over America and around the world.- This machine can and will be activated. Indeed, it is being activated at this very moment.

BUT Frank Church has his game to play too. If Senator Kennedy is clearly going to use his new chairmanship of the very powerful Senate Judiciary Committee as one of the vehicles for his presidential ambitions, Senator Church will use his new chairmanship of the almost equally powerful (and more prestigious) Senate Foreign Relations Committee as the main vehicle for his own presidential aspirations. Church has virtually said as much, in the long article based on an interview with him, in the Washington Post of Sunday, 31 December 1978. It's important to recall that Church attempted to do the same thing with the Senate Select Committee in 1976, but failed then because Mr. Carter already had it in the bag. Church made too late a start, like Jerry Brown of California, in 1976. Church won't make that mistake this time. He is starting now; indeed, he has already started.

Church's strategy is as follows, I think. He will try to use the Foreign Relations Committee to create an image of wise statesman. For example, he will try to mediate a SALT II compromise between Carter on the one hand and the Jackson-Nitze people on the other hand. In other words, he will want to play the same role for the Democrats on SALT II that Howard Baker played for the Republicans on the Panama Canal treaties. On the explicitly political front, he can tour the nation making speeches in favor of a modified SALT II agreement, and use those same visits to line up delegate support in the states which have caucuses instead of primaries, but also in some of the post-New Hampshire primary states. Church will let Senator Teddy Kennedy knock off Carter in the New Hampshire primary, in the same way that Senator Bobby Kennedy let Senator Eugene McCarthy knock off President Johnson in the New Hampshire primary of 1968. But then Church will be counting on the conservative and middle-of-the-road factions among the Democrats getting panic-stricken over Senator Kennedy out on the big-spending liberal edge of the Democratic Party. At that point, Church

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will try to position himself as the ideal compromise between Carter at the conservative edge of the party, and Kennedy at the liberal edge. Church will want to look like "Mr. Clean" from the Mountain States in comparison to Kennedy from old New England, Carter from the unreconstructed South, and Jerry Brown from kooky California. If it should turn out, however, that Carter looks a little better than expected but needs to dump Mondale, or if a Kennedy bandwagon gets rolling and is unstoppable, or if a Brown bandwagon comes along, then Church will in the end not be too proud to accept the No. 2 spot on the ticket.

One thing that could slow down Church (but not Bader, who might be given a free hand by Church) is the fact that he has a Senate re-election campaign on his hands in Idaho in 1980... and it's not always easy to run both for your Senate seat and the White House using the same strategy. But Church thinks he can do it. He thinks that the same posture as wise middle-of-the-road statesman can help him get re-elected in Idaho just as it can position him to pick up the presidential pieces as soon as it becomes clear that the obvious front-runners have faltered.

Bader's own agenda of ambitions would fit into all of the variations suggested above. I am convinced that the one job he would like above all others is your job...to be the DCI. If he could help Church get a big nomination by his services as Chief of Staff for the Foreign Relations Committee, he would be in a fair position to expect to succeed you here. But he also has close ties to Mondale and Aaron, and to some of the key Kennedy people. [I can go into considerably more detail with circumstantial evidence supporting my speculations on Bader, if you wish. He and I had been extremely close friends for 20+ years--even our wives were good friends. I have neither seen him nor heard from him in any fashion since he walked out of your office and the office across the hall from your suite here when I overlapped him here for a week in May '77. That may suggest some things to you. It surely does to me.]

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You probably don't like what you are reading above. You might well think that I am just another professor who thinks he can read political tea leaves but is in fact only mumbling some "worst possible case" personal speculations. OK, believe whatever you like. You will do that, no matter what I say. But I'll just add a couple of thoughts. First, I have no personal stake in what happens here. Next Monday, 15 January,

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I will be back on the campus, running my graduate school, teaching my classes. I am not for or against any factions in this organization--I have friends all over the organization, and I'm not taking sides for any group or against any group. One of the remarkable things is that I don't really think any serious factions even exist. I told you a long time ago, April '77, that I have no ambitions for a Washington job, and can think of few if any inducements that could persuade me to accept one...with the single exception of a national emergency loud and clear. My commitment is to my academic career, so nothing said here is designed to make me a candidate for anything in government. I also said in early 1977 that hanging around with you could cost me some friendships, and this has happened, but I will survive those losses without great anxieties. Maybe those friendships can be patched up in the future. 25X1

What I am trying to suggest is that I am saying some hard things here, and they will get harder below, only for the following reasons:

- (1) With all your warts and shortcomings (and I have my own ample share of both too), I still believe in you, still believe in your capacities for leadership and growth and change, and I am still willing to help in this process if my help is sought. But I was never anybody's "yes man," and--if that's needed--I can't provide it.
- (2) Way above and beyond you and me as individual people, there is the transcendent issue of national security, and a strong intelligence service is more than ever a requirement. Whatever I have got to say here is ultimately intended to serve this transcendent interest, and certainly no personal ambitions, no personal axes to grind for or against anybody.

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Here are my specific concrete suggestions, first on charters (which is how I got launched into this memo), and then to broader proposals.

On charters. Whichever one of my scenarios is more accurate--a dwindling of external pressures under No. 1 or the Church-Bader attacks under No. 2--you need to keep up the dance toward improved charters, to protect your political flanks if for no other reason, but perhaps also for your own internal reasons. However, there is bound to be a continuation of--indeed, even an increase in--the wrangling among key political actors in the White House and in the Senate. You therefore need to get

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a draft which you can describe as your own "interim 'ten commandments'." This will allow you to say to Mondale, Aaron, maybe Brzezinski if he joins the act, and then all of the Senate people and others: "Look, we want charters, and we will do whatever we can to help all of you notable and distinguished people to reach agreeable solutions. But, pending that, and further emphasizing how much we want to have charters, we have come up with our own which we are using on an interim basis until agreed permanent solutions are reached." This will give you something to work with internally. It will give you an image of pure sincerity and integrity with your potential or actual external critics. If those outsiders could agree that what you have come up with is OK, as far as it goes, this would narrow the ground for further disagreements. And it might force the various factions to carry on the debate on your turf rather than forcing you into the negative posture of chipping at somebody else's draft...such as old S. 2525.

Tony Lapham might have the basis of the kind of "interim charter" that I am describing in the 12 or 13 points he is negotiating with the A.G. You might want to try other formats too, something very readable. You know that there have been two "bibles" for naval officers for many years...first, the Watch Officers Guide for junior officers, and Command at Sea for senior officers. Both books are very readable, on the whole, elaborating on regulations in clear language understandable to people not trained to appreciate the technical language of laws, regulations and directives. You might want to find yourself a few smooth and talented writers who could take what your lawyers draft up, and then expand on that for some kind of smooth manual or guide book like the two Navy "bibles" cited above. You could take such a guide book and wave it around in the White House and/or on Capitol Hill, further evidence of your sincere determination to improve the ethics in this organization without waiting for final language to be set in concrete.

On politics. I don't know your new Legislative Counsel, Fred Hitz. Maybe he is outstanding. But, unless he is performing the role I am about to describe, you need such a person. This person would be one of those rare artists who know how to "work the Hill." This person would keep you closely informed well in advance on whatever might be brewing on the Hill, and would sell your goals and purposes and actions to the Hill people. If you don't have this kind of artist on board, I can name a couple of guys who have played this role--they would probably not be available to you, but they could tell you whether there are people who could do this for you.

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FLASH--COINCIDENCE: Just after typing the previous page, I got a phone call from Fred Hitz inviting me to his office for a chat. He is a most personable and perceptive young man. It turned out that he and I share several prejudices, and a few similar institutional connections (such as Princeton), so we had no trouble getting on the same wave length in a hurry. Whether he has the experience and maturity to carry the major load for you on Capitol Hill is another question, and one that I can't answer. But Capitol Hill is a young man's game these days, particularly when looking at many of the critically important staffers, so maybe a bright and articulate and mildly aggressive youngster such as Hitz is just the right ticket for you. In any case, repeating myself, "working the Hill" is an art form, and there are no particular requirements in terms of age or experience except to be able to do it well. Keep a sharp eye on Hitz--he might be a super-star for you. But, if bad things start happening to you from the Hill that take you by surprise, or if you can't come up with a workable strategy for coping with the Hill, you may need more help or other help in your Office of Legislative Counsel.

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MY FINAL JUDGMENT ON CHARTERS. The heat is rapidly dying down. Earlier emotions are fading. The year of 1979 is going to overwhelm the White House and Congress with pre-1980 issues that will get thoroughly mixed up in presidential election year politics. In all of this, unless you yourself and/or the CIA under your leadership is involved somehow in some fresh scandal (either in the "abuses" category or the "failure of intelligence" category), with the dissipation of external pressures for "reform," your main need for "charters" will be to satisfy your own sense of needs, and to protect your political flanks against the occasional flare-up of charter talk from people such as Mondale, Bader, etc. Since this is mainly a political rather than a legal process, even your own internal needs (in my opinion) are mainly for perhaps new formats and codifications, because you have most of the raw materials that you need. Because it's a political rather than legal process, your internal documents will necessarily be incremental--there will never be a blinding flash of lightning which results in a perfect new document satisfying everybody and lasting for the ages. Accept this fact, do it incrementally, do it simply to clean up and improve formats and codifications, and get on with your main business. In the major 1979-80 election campaigns, there will be very little political mileage in the charters questions, so you are gaining control of this problem simply by the passage of time and resulting attritions on people and

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their memories and the emergence of new issues. Old issues are being overtaken by new events.

Finally, I might add a note of applause for Tony Lapham, and other professionals in your Office of the General Counsel. They are among your good people. They like and support you, and they are doing a fine job for you. And, they aren't complaining about anything, at least not anything in this building. But, if I were them, I might feel slightly hassled that some new Napoleon was asking me to produce a new Napoleonic Code...which has survived only in Louisiana, and very few people are moving to Louisiana these days.

- END -

V.r.,

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